An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-345

No. COA21-324

Filed 17 May 2022

Mecklenburg County, No. 20 CVS 10092

LARRY DILLARD, Plaintiff,

v.

THE WESTERN NORTH CAROLINA CONFERENCE OF THE UNITED METHODIST CHURCH (a/k/a WESTERN NORTH CAROLINA CONFERENCE); and THE CHILDREN'S HOME, INCORPORATED (a/k/a THE CHILDREN'S HOME, a/k/a THE CROSSNORE SCHOOL & CHILDREN'S HOME, a/k/a CROSSNORE CHILDREN'S HOME), Defendants.

Appeal by defendants, by writ of certiorari, from order entered 19 April 2021 by Judge Lisa C. Bell in Mecklenburg County Superior Court. Heard in the Court of Appeals 9 February 2022.

Janet Janet & Suggs, LLC, by Richard Serbin and Matthew White, for plaintiff-appellee.

Ogletree, Deakins, Nash, Smoak & Stewart, P.C., by Kelly S. Hughes and Ashley P. Cuttino, pro hac vice, for defendant-appellant The Western North Carolina Conference of the United Methodist Church (a/k/a Western North Carolina Conference).

Nelson Mullins Riley & Scarborough LLP, by Lorin J. Lapidus, G. Gray Wilson, and D. Martin Warf, for defendant-appellant The Children's Home, Incorporated (a/k/a The Children's Home, a/k/a The Crossnore School & Children's Home, a/k/a Crossnore Children's Home).

ZACHARY, Judge.

¶ 1 Defendants The Western North Carolina Conference of the United Methodist Church ("UMC") and The Children's Home, Incorporated ("TCH") appeal from the trial court's order granting Plaintiff Larry Dillard's motion to transfer Defendants' motions to dismiss, which raised constitutional challenges to a portion of the Sexual Assault Fast Reporting and Enforcement Act, to a three-judge panel of the Wake County Superior Court pursuant to N.C. Gen. Stat. §§ 1-267.1(a1), 1-81.1(a1), and 1A-1, Rule 42(b)(4) (2021) (collectively, the "three-judge panel provisions").

¶ 2 The Sexual Assault Fast Reporting and Enforcement Act ("the Act") was enacted in 2019 to "strengthen and modernize" our sexual assault laws. *See* An Act to Protect Children from Sexual Abuse and to Strengthen and Modernize Sexual Assault Laws, S.L. 2019-245, 2019 N.C. Sess. Laws 1231. Among other revisions, the Act extended to ten years the statute of limitations for a civil action based on sexual abuse suffered while a minor. *Id.* § 4.1, 2019 N.C. Sess. Laws at 1234; *see* N.C. Gen. Stat. §§ 1-17(d), 1-52(16). Further, it provided that "a plaintiff may file a civil action within two years of the date of a criminal conviction for a related felony sexual offense against a defendant for claims related to sexual abuse suffered while the plaintiff was under 18 years of age." S.L. 2019-245, § 4.1, 2019 N.C. Sess. Laws at 1234; *see* N.C. Gen. Stat. § 1-17(e). The Act also contained a provision, effective from 1 January 2020

to 31 December 2021, that revived "any civil action for child sexual abuse otherwise time-barred under G.S. 1-52 as it existed immediately before" the Act's passage. *See* S.L. 2019-245, § 4.2(b), 2019 N.C. Sess. Laws at 1235 (the "revival section").

¶ 3 On 10 August 2020, Plaintiff filed a complaint against UMC and TCH, an orphanage that Plaintiff alleged in his complaint was owned and operated by UMC. Plaintiff sought damages for injuries resulting from Plaintiff's sexual abuse by his "house parents," which allegedly occurred at TCH when Plaintiff was a minor in the 1970s and residing at the orphanage. In his complaint, Plaintiff asserted claims for negligence; negligent hiring, retention, and supervision; breach of fiduciary duty; and constructive fraud. Plaintiff also maintained that his otherwise time-barred claims were revived by the Act. Other individuals, including the plaintiff in *Lakins v. The Western North Carolina Conference of the United Methodist Church*, 2022-NCCOA-337, alleged similar claims in complaints filed with the Mecklenburg County Superior Court, which they also contended were revived by the Act.

¶ 4 Defendants UMC and TCH filed their respective motions to dismiss pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure on 28 October 2020 and 7 January 2021, challenging, *inter alia*, the constitutionality of the Act's revival section as it applied to them. UMC further asserted that the claim should be dismissed pursuant to Rule 12(b)(1) for lack of subject-matter jurisdiction.

¶ 5 On 1 April 2021, Plaintiff filed a motion to transfer Defendants' motions to

dismiss challenging the Act's constitutionality to a three-judge panel of the Wake County Superior Court, pursuant to the three-judge panel provisions.

¶ 6 On 22 February 2021, the trial court conducted a hearing in *Lakins* regarding the plaintiff's motion to transfer to a three-judge panel for a determination of the constitutionality of the Act, and on 22 March 2021, the court entered its order granting the plaintiff's motion. *See* 2022-NCCOA-337, ¶ 5. The defendants timely filed notices of appeal. *See id.*

¶ 7 Although a hearing on the motion to transfer in the case at bar was scheduled for 18 May 2021, the trial court on 19 April 2021 entered an *ex parte* order granting Plaintiff Larry Dillard's motion to transfer, determining that "[t]he constitutional challenges contained in [D]efendants' respective motions to dismiss under Rule 12(b)(6) raise facial challenges" to the constitutionality of the Act. The trial court declined to rule on Defendants' remaining unnoticed and unscheduled Rule 12(b)(6) motions and UMC's unnoticed and unscheduled Rule 12(b)(1) motion, and stayed "all matters that are contingent upon the outcome of the challenge to the [A]ct's facial validity" by the three-judge panel. The court's order was substantially similar to the *Lakins* order in all respects relevant to this appeal. Defendants timely filed notices of appeal.

¶ 8 On appeal, this case was heard simultaneously with three other cases appealed by Defendants and raising largely identical legal issues. *Id.* at ¶ 18. The dispositive

question presented in each is whether the trial court erred by concluding that Defendants raised a facial constitutional challenge to the Act. UMC also argues in each that the trial court erred by considering Plaintiff's motion to transfer prior to hearing UMC's Rule 12(b)(1) motion to dismiss for lack of subject-matter jurisdiction under the ecclesiastical-entanglement doctrine. Both Defendants argue that the trial court erred by granting Plaintiff's motion to transfer *ex parte*.

¶ 9 For the reasons stated in *Lakins*, we vacate and remand the trial court's order. *Id.* at ¶¶ 26–29. To the extent that this Court's opinion in *Cryan v. National Council of Young Men's Christian Association of the United States of America*, of which the trial court did not have the benefit when it entered its order, provides new and additional insight on the question of law with regard to facial constitutional challenges, the trial court should reconsider whether Defendants' constitutional challenges are facial or as-applied in light of *Cryan*. *See* 2021-NCCOA-612, ¶ 22 (reversing a trial court's determination that a defendant had raised a facial challenge to N.C. Gen. Stat. § 1-17(e)); *accord Lakins*, 2022-NCCOA-337, ¶ 29.

¶ 10 Because the trial court did not rule on UMC's Rule 12(b)(1) motion, we express no opinion on the merits of UMC's ecclesiastical-entanglement argument. However, we note that Rule 42(b)(4) of the North Carolina Rules of Civil Procedure requires that the trial court dispose of all matters which are not contingent on the facial constitutionality of the statute in question prior to a transfer to a three-judge panel.

See Lakins, 2022-NCCOA-337, ¶ 33; *accord* N.C. Gen. Stat. § 1A-1, Rule 42(b)(4).

¶ 11 Given this Court's disposition regarding the above issues, we need not address Defendants' remaining arguments. On remand, the trial court shall consider UMC's Rule 12(b)(1) motion to dismiss as a threshold issue with regard to UMC prior to ordering any transfer. *Lakins*, 2022-NCCOA-337, ¶ 40. In particular, if it determines that UMC's ecclesiastical-entanglement argument has merit, "the trial court has the duty to take notice of the defect and stay, quash or dismiss the suit[,]" at least with respect to UMC. *Id.* at ¶ 36 (citation and internal quotation marks omitted).

¶ 12 Accordingly, we vacate the trial court's transfer order and remand to the trial court for reconsideration of Plaintiff's motion to transfer, consistent with this opinion.

VACATED AND REMANDED.

Judges COLLINS and CARPENTER concur.

Report per Rule 30(e).